

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the Responsible
Authority for the Hennepin County
Children and Family Services
Department that Certain Data
Regarding Greg Russel is Accurate
and/or Complete

ORDER

On April 19, 1996, the Petitioner in the above matter, Greg Russel, filed a motion seeking to compel the County to produce certain redacted portions of a memorandum dated March 29, 1995. The motion was the subject of a telephone conference with the parties on April 25, 1996. On April 29, 1996, the Department submitted its file in this matter to the Administrative Law Judge for an *in camera* review pursuant to Minn. Stat. § 13.03, subd. 6, and submitted argument in support of its position.

James M. Burseth, Esq., 317 Second Avenue South, Suite 200, Minneapolis, Minnesota 55402, appeared on behalf of the Petitioner. Vicki Vial-Taylor, Assistant Hennepin County Attorney, 2000 Government Center, Minneapolis, Minnesota 55487, represented the Children and Family Services Department of Hennepin County.

Based upon the *in camera* inspection, the argument filed by the parties, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED:

1. The documents as submitted by the Department for *in camera* review shall be produced to the Petitioner.
2. The inspected documents released to the Petitioner are subject to the following Protective Order:

Because the records ordered to be produced are private data under Minn. Stat. § 13.46, this information shall be used only for the purposes of this appeal and shall not be otherwise disclosed to any person other than the Petitioner or his attorney. All private data produced shall be so marked to avoid inadvertent disclosure. Upon the termination of this

contested case proceeding, all private information shall be returned to the party from whom it was obtained.

3. The Department is directed to notify the subjects of data produced pursuant to this Order in writing that data pertaining to them is being released pursuant to this Order. A copy of the Order shall be sent to the subject of the data.

4. Within one week of the date of this Order, the Petitioner shall submit a statement which specifically sets out what data is inaccurate or incomplete and how it must be changed or added to in order to resolve this matter.

Dated this _____ day of May, 1996

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Hennepin County Department of Children and Family Services has submitted the documents contained in the Petitioner's child protection assessment file for an *in camera* review. Under Minn. Stat. § 626.556, subd. 11, the name of a reporter of child maltreatment can be disclosed only with the consent of the reporter or upon a written finding by the court that the report was false and that there was evidence that the report was made in bad faith. See *Guetter v. Brown County Family Services*, 414 N.W.2d 729 (Minn. 1987). In its demand motion dated April 19, 1996, the Petitioner set out 48 redacted parts of the March 29, 1995 memo which it sought to have produced. The Department maintains that items 1, 3, 5-9, 17, 28, and 35 in that motion are not discoverable absent a court order since they identify reporters. Accordingly, that material remains redacted in the submission to the Administrative Law Judge.

The material submitted to the Administrative Law Judge also contains private data which may not be produced to the Petitioner absent an *in camera* review pursuant to Minn. Stat. § 13.03, subd. 6. Under that statute, the Administrative Law Judge is directed to determine whether the data is discoverable and if so, whether the benefit to the Petitioner outweighs any harm to the confidentiality interests of the Department or of any person who has provided the data or who is the subject of the data or to the privacy interest of an individual identified in the data.

The nature of the Petitioner's appeal is a contest as to the accuracy or completeness of the data in the subject memorandum. The Petitioner argues that he cannot proceed with his appeal due to the extensive redaction in the memo produced to him. It appears that the material submitted to the Administrative Law Judge is

discoverable under the usual rules of administrative procedure. The memo originally provided to the Petitioner was so heavily redacted that it precluded an intelligent reading of the document. Since Mr. Russel cannot effectively proceed with his appeal without the production of this material, it is reasonable to conclude that the benefit to him outweighs the harm to any confidentiality interests as set out in the statute. Since the confidentiality of all reporters is maintained, the violation of privacy interests is minimized. Additionally, however, the release of this information is governed by the Protective Order set out above which must be strictly adhered to. Additionally, the Department is directed to provide appropriate notice to the subjects of the data by providing them with a copy of this Order.

G.A.B.